

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1065 of 2007()

AGAINST THE ORDER DATED 21/03/2007 IN CMP 1459/2007 IN
CC.25/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA
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PETITIONER: ACCUSED

K.S.ANILKUMAR,
KOTHAPARAMBU, PATTANAKKAD P.O.,
ALAPPUZHA DISTRICT.

BY ADV. SRI.M.R.ARUN KUMAR

RESPONDENTS: COMPLAINANT & STATE

1. P.K.SURESH,
PUTHENTHARA VEEDU, ANDHAKARANAZHI P.O.,
CHERTHALA, ALAPPUZHA DISTRICT.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. S.U. NAZAR
R1 BY ADV. SRI.JOHN JOSEPH(ROY)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 1065 of 2007

Dated this the 29th day of May, 2007

ORDER

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. Signature in the cheque is admitted. The notice of demand was admittedly received by the petitioner. There was no response to the notice of demand. In the course of the trial, the accused took the stand that the cheque was a signed blank cheque when it was handed over to one Jayan @ Charles. That cheque has been obtained by the complainant, who is staking a false claim, it was contended. After examination under Section 313 Cr.P.C. the accused filed an application to forward the cheque to the expert. The learned Magistrate, by the impugned order, copy of which is produced as Annex.A2, turned down the said request. The discretion under Section 254(2) Cr.P.C. was not exercised in favour of the petitioner. The petitioner has therefore come before this Court with a prayer that the powers under Section 482 Cr.P.C. may be invoked to set aside the impugned order and forward the cheque to the expert.

2. The prayer is opposed by the learned counsel for the complainant. The learned counsel for the complainant submits that the petitioner does not have a consistent case at all and that in these circumstances it is not necessary to interfere with the impugned order at this stage.

3. I must alertly remind myself of the nature, quality and contours of jurisdiction of this Court under Section 482 Cr.P.C. That is an extraordinary jurisdiction which is to be invoked only in exceptional cases and that too only to advance the interests of justice. Such jurisdiction has not to be invoked as a matter of course even when the court feels that an error in law or facts has been committed by the trial Court. The law frowns upon an attempt to challenge interlocutory orders which will unnecessarily protract the proceedings. This policy of law is reflected in Section 397(2) Cr.P.C. where there is an embargo against challenge against interlocutory orders in revision. Ordinarily and normally therefore such interlocutory orders must wait for their challenge till the final orders are passed in the proceedings. If necessary, such orders like the impugned one can also be challenged along with the final order to be passed.

4. The learned Magistrate has said that there is no consistent case for the petitioner. It is noted that the notice of demand was not replied to. It is

further noted that the learned Magistrate has observed thus in the impugned order: “more over S.313 Cr.P.C. statement shows that the accused did fill up the date and the amount.” If that be so, I am of the opinion that insistence on the cheque being examined by an expert is without any merit. However, it is not for me to express any final opinion on the question now. I have not intended to do so. Leaving open the right of the petitioner to challenge the impugned order also along with the final order to be passed in the proceedings, I am satisfied that this CrI.M.C. deserves to be dismissed.

5. This CrI.M.C. is hence dismissed subject to the above observations.

(R. BASANT)
Judge

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